

Proposed Amendments to the Basic Land Use Ordinance and
Shoreland Zoning Ordinance Addressing the Planning Board's
Opportunity to Assume Jurisdiction for the Review of Applications
for the Reconstruction or Replacement of Nonconforming Structures

A. Proposed Amendments to Section 10.3. Nonconforming
Structures, Section 13.4. Procedure for Administering Permits,
Section 12.3. Board of Appeals and Section 14.2. Appeals in the Basic
Land Use Ordinance

Proposed additions to the ordinance are underlined;
proposed deletions are ~~struck-out~~.

1. Amend Section 10.3. Nonconforming Structures to read:

10.3. Nonconforming Structures

10.3.1. Expansions. A nonconforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the nonconformity of the structure. For the purposes of this Ordinance, an increase to the nonconformity of the structure shall mean:

- any expansion towards a property line or road that decreases the shortest existing non-conforming setback distance from property line or road, or
- any expansion which would cause the total area covered by the structures, driveways, parking lots, and other impermeable surfaces to exceed twenty percent (20%) of the total lot area, or
- any expansion which would cause the structure to exceed the height limits of this Ordinance.

The shortest existing nonconforming setback distance from a property line or a road may not be measured from an existing area, such as a small patio, terrace, landing, or small set of stairs, used mainly for access to a structure.

Citizen's Note: *It should be understood that small patios, terraces, landings, or small sets of stairs within minimum setbacks do not change the setback of the adjacent*

structure and cannot be used to justify expansion of any other part of the structure into that setback.

10.3.1.1. After September 15, 1997, or the effective date of any amendment to this Ordinance creating any new nonconforming conditions, if any portion of an existing structure is less than the required setback from the road or property line, that portion of the structure shall not be expanded in floor area or volume, by more than thirty percent (30%), during the lifetime of the structure.

10.3.1.2. Construction of a foundation beneath an existing building that is nonconforming as to setbacks shall not be considered an expansion of the structure provided that:

10.3.1.2.1. The foundation shall not extend beyond the exterior dimension of the building as it existed on September 15, 1997 or the effective date of any amendment to this Ordinance creating any new nonconforming condition, or as expanded in accordance with Section 10.3.1.1.

***Citizen's Note:** Disputed decisions may be appealed to the Board of Appeals.*

10.3.2. Relocation, Reconstruction, or Replacement

10.3.2.1. Relocation. A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the CEO, and provided that the applicant demonstrates that the present sub-surface wastewater disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming. Any relocation approved by the CEO pursuant to this subsection shall be endorsed in writing by the CEO.

10.3.2.2. Reconstruction or Replacement. Any nonconforming structure that is located less than the required setback from a property line or road and which is removed, damaged, or destroyed by more than fifty percent (50%) of the assessed value of the structure, as adjusted by the Town's assessment ratio as most recently certified by the Assessors to the State of Maine, before such damage, destruction, or removal, as determined by the Assessors or their designee in consultation with the CEO, may be reconstructed or replaced provided that a permit is obtained within one (1) year of the date of said damage, destruction, or removal, and provided such replacement or reconstruction is in compliance with the setback requirements to the greatest practical extent as determined by the CEO in accordance with the purposes of this Ordinance; provided, however, that any nonconforming structure that is located less than the required setback from a property line or road and that is damaged or destroyed by fire or any cause other than the willful act or negligence

of the owner or the owners agent may be reconstructed on the same footprint as the structure that was destroyed. In no case shall a structure be reconstructed or replaced so as to increase its nonconformity. Any reconstruction or replacement approved by the CEO pursuant to this subsection shall be endorsed in writing by the CEO.

10.3.2.3 Authority of Planning Board to Exercise Jurisdiction over an Application. For any application for relocation of a nonconforming structure, or for the reconstruction or replacement of a nonconforming structure that was removed, damaged, or destroyed by more than fifty percent (50%) of the adjusted assessed value of the structure, made under Section 10.3.2, the CEO shall provide written notice to the Planning Board and all property owners within two hundred fifty (250) feet of the property as listed on the Town's most recent assessing records that a relocation, reconstruction or replacement application has been received and is being reviewed. During that forty (40) day time period, the Planning Board may elect to exercise jurisdiction over the relocation, reconstruction or replacement application. The Planning Board's review, if any, shall be governed by the same review standards as govern the CEO review. The CEO shall not issue any permit under this Section until the earlier of (a) forty (40) days after the date that the CEO provides such written notice to the Planning Board and all property owners within two hundred fifty (250) feet of the property as listed on the Town's most recent assessing records or (b) the date the Planning Board declines to exercise jurisdiction over the application. Any relocation, reconstruction or replacement application approved by the Planning Board pursuant to this subsection shall be endorsed in writing. Failure of any property owner to receive the notice sent under this subsection does not invalidate any action taken by the CEO or Planning Board.

10.3.2.4. Greatest Practical Extent Setback Factors. In determining whether the building relocation, reconstruction or replacement meets the setback to the greatest practical extent, the CEO or Planning Board, as applicable, shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic systems and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

2. Amend Section 13.4. Procedure for Administering Permits to read:

13.4. Procedure for Administering Permits

13.4.1. With the exception of applications for subdivision and site plan review approvals and applications for which the Planning Board is provided the opportunity to take jurisdiction, the Planning Board or CEO, as appropriate, shall examine all written applications for permits or other actions under the Town's land use ordinances and within thirty-five (35) days from the date of receipt of such written application, shall notify the applicant in writing either that the application is a complete application, or, if

the application is incomplete, that specified additional material is needed to make the application complete.

13.4.2. With the exception of applications for subdivision and site plan review approvals and applications for which the Planning Board is provided the opportunity to take jurisdiction, the Planning Board may or CEO shall, as appropriate, within the thirty-five (35) day time frame, visit the site for which the permit is sought.

13.4.3. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purpose and provisions of the Town's land use ordinances and any State or Federal law, regulation or rule.

13.4.4. With the exception of applications for subdivision and site plan review approvals and applications for which the Planning Board is provided the opportunity to take jurisdiction, the Planning Board or CEO, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within thirty-five (35) days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within thirty-five (35) days of the public hearing if one is held, or within thirty-five (35) days of the next regularly scheduled meeting at which the application is considered.

3. Amend Section 12.3.1.1 Administrative Appeals to read:

12.3.1.1. Administrative Appeals. To hear and decide appeals, on an appellate basis, where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Planning Board or the Assessors or their designee in the administration of the Town's land use ordinances; and to hear and decide administrative appeals, on a *de novo* basis, where it is alleged that there is an error in any order, requirement, decision or determination made by the CEO or Local Plumbing Inspector in the administration or enforcement of the Town's land use ordinances, the Maine Subsurface Waste Water Disposal Rules, Internal Plumbing Code, Minimum Lot Size Law and Regulations, and Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone; provided, however, that the CEO or Local Plumbing Inspector's exercise of his or her discretionary judgment whether to pursue enforcement activity under the Town's land use ordinances, the Maine Subsurface Waste Water Disposal Rules, Internal Plumbing Code, Minimum Lot Size Law and Regulations, and Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone is not subject to appeal.

4. Amend Section 14.2.1 Administrative Appeals to read:

14.2.1. Administrative Appeal. An administrative appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the CEO, ~~or the Planning Board,~~ or the Assessors or their designee unless otherwise noted in the appropriate land use

ordinance or any decision of the Local Plumbing Inspector in the administration of the Maine Subsurface Waste Water Disposal Rules, Internal Plumbing Code, Minimum Lot Size Law and Regulations, and Rules for Conversion of Seasonal Dwelling Units into Year-Round Residences in the Shoreland Zone. Such appeal shall be taken within forty (40) days of the date of the decision appealed from, and not otherwise, except that the Board, upon showing of good cause, may waive the forty (40) day requirement.

B. Proposed Amendments to Section 10.3 Nonconforming Structures in the Shoreland Zoning Ordinance

Proposed additions to the ordinance are underlined;
proposed deletions are ~~struck-out~~.

1. Amend Section 10.3 Non-Conforming Structures to read:

10.3. Non-Conforming Structures

10.3.1. Expansions. A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure. For the purposes of this Ordinance, an increase to the non-conformity of the structure shall mean:

- any expansion towards a water body, great pond, stream, tributary stream, coastal wetland, freshwater wetland or property line that decreases the shortest existing non-conforming setback distance from the; water body, great pond, stream, tributary stream, coastal wetland, freshwater wetland or property line; or
- any expansion that would cause the structure to exceed the impermeable surface coverage requirements of Section 15.2.4; or
- any expansion that would cause the structure to exceed the height limits of Section 15.2.2.

The shortest existing non-conforming setback distance from a water body, great pond, stream, tributary stream, coastal wetland, freshwater wetland or a property line may not be measured from an existing area used mainly for access to a structure, such as a small patio, terrace, landing, or small set of stairs.

***Citizen's Note:** It should be understood that small patios, terraces, landings, or small sets of stairs within minimum setbacks do not change the setback of the adjacent structure and cannot be used to justify expansion of any other part of the structure into that setback.*

10.3.1.1. Further limitations. If any portion of a structure in existence as of January 1, 1989 is less than the required setback from the maximum high water line of a great pond, stream, tributary stream, HAT of the coastal wetland, upland edge of a freshwater wetland, or from a property line, that portion of the structure shall not be expanded in floor area or volume, by thirty percent (30%) or more, during the lifetime of the structure. If a replacement structure conforms to the requirements of Section 10.3.2.2 and is less than the required setback from a great pond, stream, tributary stream, coastal wetland or freshwater wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by thirty percent (30%) in floor area and volume since that date.

***Citizen's Note:** Disputed decisions may be appealed to the Board of Appeals.*

10.3.1.2. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Code Enforcement Officer, basing the decision on the criteria specified in Section 10.3.2.1, Relocation. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 10.3.1.1, Further limitations, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

10.3.2. Relocation, Reconstruction, or Replacement

10.3.2.1. Relocation. A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Codes Enforcement Officer, and provided that the applicant demonstrates that the present sub-surface wastewater disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more nonconforming. Any relocation approved by the Code Enforcement Officer pursuant to this subsection shall be endorsed in writing by the Code Enforcement Officer.

In determining whether the building relocation meets the setback to the greatest practical extent, the Code Enforcement Officer shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic systems and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the resource setback area in order to relocate a structure, the Code

Enforcement Officer shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

10.3.2.1.1. Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than fifty percent (50%) of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

10.3.2.1.2. Where feasible, when a structure is relocated on a parcel, the original location of the structure shall be replanted with vegetation that may consist of grasses, shrubs, trees, or a combination thereof.

10.3.2.2. Reconstruction or Replacement – More than Fifty Percent of Value. Any non-conforming structure that is located less than the required setback from a waterbody, great pond, stream, tributary stream, coastal wetland, freshwater wetland or from a property line, and that is removed, damaged, or destroyed, regardless of the cause, by more than fifty percent (50%) of the assessed value of the structure, as adjusted by the Town's assessment ratio as most recently certified by the Assessors to the State of Maine, before such damage, destruction, or removal, as determined by the Assessors or their designee in consultation with the Code Enforcement Officer, may be reconstructed or replaced provided that a permit is obtained within one (1) year of the date of said damage, destruction, or removal, and provided that such replacement or reconstruction is in compliance with the setback requirements to the greatest practical extent, as determined by the Code Enforcement Officer, in accordance with the purposes of this Ordinance. In no case, shall a structure be reconstructed or replaced so as to increase its non-conformity. Any reconstruction or replacement approved by the Code Enforcement Officer pursuant to this subsection shall be endorsed in writing by the Code Enforcement Officer. If the reconstructed or replacement structure is less than the required setback, it shall not be any larger than the original structure, except as allowed pursuant to Section 10.3.1. above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove

vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 10.3.2.1 above.

~~Any non-conforming structure that is located less than the required setback from a water body, tributary stream, or wetland and that is removed by fifty percent (50%) or less of the assessed value of the structure, as adjusted by the Town's assessment ratio as most recently certified by the Assessors to the State of Maine, or damaged or destroyed by fifty percent (50%) or less of the assessed value of the structure, as adjusted by the Town's assessment ratio as most recently certified by the Assessors to the State of Maine, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.~~

In determining whether the building reconstruction or replacement meets the water body, great pond, stream, tributary stream, coastal wetland, or freshwater wetland setback to the greatest practical extent, the Code Enforcement Officer shall consider, in addition to the criteria in Section 10.3.2.1 above, the physical condition and type of foundation present, if any.

10.3.2.3. Reconstruction or Replacement – Fifty Percent or Less of Value. ~~Any non-conforming structure that is located less than the required setback from a water body, great pond, stream, tributary stream, coastal wetland or freshwater wetland or from a property line and that is removed by fifty percent (50%) or less of the assessed value of the structure, as adjusted by the Town's assessment ratio as most recently certified by the Assessors to the State of Maine, as determined by the Assessors or their designee in consultation with the Code Enforcement Officer or damaged or destroyed by fifty percent (50%) or less of the assessed value of the structure, as adjusted by the Town's assessment ratio as most recently certified by the Assessors to the State of Maine as determined by the Assessors or their designee in consultation with the Code Enforcement Officer, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one year of such damage, destruction, or removal.~~

10.3.2.43. Authority of Planning Board to Exercise Jurisdiction over an Application. For any application for relocation of a nonconforming structure made under 10.3.2.1, or for the reconstruction or replacement of a nonconforming structure involving more than fifty percent of its adjusted assessed value made under 10.3.2.2 ~~made under Section 10.3~~, the Code Enforcement Officer shall provide written notice to the Planning Board and all property owners within two hundred fifty (250) feet of the property as listed on the Town's most recent assessing records that a relocation, reconstruction or replacement application has been received and is being reviewed. During that forty (40) day time period, the Planning Board may elect to exercise jurisdiction over the relocation, reconstruction or replacement application. The Planning Board's review, if any,

shall be governed by the same review standards as govern the Code Enforcement Officer's review. The Code Enforcement Officer shall not issue any permit under this Section until the earlier of (a) forty (40) days after the date that the Code Enforcement Officer provides such written notice to the Planning Board and all property owners within two hundred fifty (250) feet of the property as listed on the Town's most recent assessing records or (b) the date the Planning Board declines to exercise jurisdiction over the application. Any relocation, reconstruction or replacement application approved by the Planning Board pursuant to this subsection shall be endorsed in writing. Failure of any property owner to receive the notice sent under this subsection does not invalidate any action taken by the Code Enforcement Officer or Planning Board.